

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Luis Raul Olivera Chavira and
Carlos Humberto Munoz Morales,

Defendants.

**MEMORANDUM OPINION
AND ORDER**

Criminal No. 06-202(1-2) ADM/SRN

Nathan P. Petterson, Esq., Assistant United States Attorney, Minneapolis, MN, for and on behalf of Plaintiff.

Barry V. Voss, Esq., Barry V. Voss, PA, Minneapolis, MN, for and on behalf of Defendants.

I. INTRODUCTION

This matter came before the undersigned United States District Judge for argument pursuant to the Plaintiff United States of America's ("Government") Motion to Review Order of Release [Docket No. 8] on July 11, 2006. The Orders of Release [Docket Nos. 10, 12] were issued by Magistrate Judge Janie S. Mayeron on June 14, 2006. The Government's Motion to Stay Order of Pretrial Release [Docket No. 6] was granted by Judge Mayeron in a June 15, 2006 Order [Docket No. 9]. The factual background in this matter is set forth in the June 15, 2006 Order and is incorporated by reference for purposes of the present Motion. For the reasons set forth below, the Motion is granted, and the Defendants are ordered to be detained.

II. DISCUSSION

Jurisdiction to review appeals of release orders is granted pursuant to 18 U.S.C. § 3145(a)(1). Release orders are reviewed *de novo*. United States v. Maull, 773 F.2d 1479, 1481 (8th Cir. 1985).

Judge Mayeron's June 15, 2006 Order concluded that Defendants Luis Raul Olivera Chavira and Carlos Humberto Munoz Morales (collectively, "Defendants"), who are residents of Chihuahua, Mexico, did not present a risk of non-appearance. Order at 5. The Order determined that the Defendants' appearance could be assured by requiring them to report regularly to pretrial services in El Paso, Texas, located three hours from Chihuahua. Additionally, Defendants agreed to waive extradition in any future proceedings. Id.

The Government, however, contends there is convincing evidence that the Defendants present a risk of flight, noting the lack of ties between the Defendants and Minnesota. Moreover, the Government avers the Defendants came to Minnesota for the sole purpose of defrauding Minnesota companies through the use of counterfeit credit cards. The prosecution also cited the United States Pretrial Services recommendation that Defendants be detained, as they were no conditions which could assure the Defendants' appearance at future court dates.

After hearing argument regarding the Government's Motion, the Court asked for supplemental information regarding whether the Pretrial Services office in El Paso, Texas would undertake supervision by monitoring conditions of release the Court would set. The Court has now received an affidavit from Oscar Torres of the United States Pretrial Services in El Paso advising that there is no supervision of defendants residing in Mexico by his office. Additionally, the affidavit of Thomas Boyle, a special agent with the Department of Homeland

Security Immigration and Customs Enforcement, avers that if the Defendants returned to Mexico, any previously issued I-94A would be invalidated. Therefore, Defendants potentially would not have permission to return to Minnesota.

Based on the concerns raised by the Government with respect to the inability of Pretrial Services to monitor Defendants while in Mexico and issues regarding the legality of Defendants to return to Minnesota, coupled with the Defendants' lack of meaningful connections to Minnesota, the Court is convinced Defendants pose a risk of flight. As a result, the Government's Motion is granted.

III. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion to Review Order of Release [Docket No. 8] is **GRANTED**; and
2. The Defendants are ordered to be detained in Minnesota.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: August 4, 2006.